FINAL

Submitted by
Rob Nederhood

RECOMMENDATIONS

OF THE

INSURANCE AND FINANCE ADVISORY RULES COMMITTEE

TO THE

OFFICE OF REGULATORY REINVENTION

October 2011

Office of Regulatory Reinvention
Insurance and Finance Advisory Rules Committee

Bill Berenson
Michigan Market President
AETNA

Lorray Brown
Michigan Poverty Law Program

Patty Campbell
President & CEO
Christian Financial Credit Union

Kevin Clinton
Commissioner
Office of Financial and Insurance Regulation

Mark Cook
Vice President of Governmental Affairs
BCBSM

Allan Daniels
President
AA Mortgage Corp.

David Field
(Insurance Subcommittee Chair)
Regional Counsel – Law and Regulation
Allstate

Kurt Gallinger
Vice President & Counsel – Government Relations
Amerisure Mutual Insurance Company

Steve Hilfinger
(Committee Chair)
Director and Chief Regulatory Officer
Department of Licensing and Regulatory Affairs

Lawrence Kish
President & General Counsel
Life Insurance Association of Michigan

Robert Pierce
CEO
Michigan Association of Insurance Agents

Jeanne Richter
President and CFO
Farmers State Bank of Munith

Robert Worthington
(Banking/Other Finance Subcommittee Chair)
Senior Vice President, General Counsel & Risk Management Director
Mercantile Bank of Michigan

Table of Contents

1. Introduction
2. Additional Observations
3. Recommendations
Appendix A: Final Issue Papers

1. INTRODUCTION

a. Background

The Insurance and Finance Advisory Rules Committee (ARC) was created by the Office of Regulatory Reinvention (ORR), in accordance with Executive Order 2011-5. The mission of the ORR is to ensure that Michigan's regulatory environment is simple, fair, efficient, and conducive to business growth and job creation. The purpose of the Insurance and Finance Advisory Rules Committee (ARC) is to produce advisory recommendations to the Office of Regulatory Reinvention (ORR) for changes to Michigan's existing regulatory climate.

This report contains the final recommendations of the Insurance and Finance ARC. Based in part on the recommendations received from the Advisory Rules Committees and other inputs, the ORR will issue a report to the Governor containing its recommendations for regulatory reinvention as it pertains to the insurance and finance sectors in Michigan.

NOTE: This document is not part of the rulemaking process. This report is a set of recommendations from the Insurance and Finance Advisory Rules Committee to the ORR. Any proposed changes to administrative rules recommended by this report will be made as part of the rulemaking process, and any proposed changes to Michigan statute are subject to the legislative process.

b. Scope

The Insurance and Finance ARC was tasked with evaluating and making recommendations for changes to Michigan's insurance and finance-related regulations, including existing administrative rules, non-rule regulatory actions, regulatory processes, and as necessary, statutes. Evaluations and recommendations were based on the application of the seven factors described in Executive Order 2011-5 to existing rules. Those seven factors are as follows:

1. Health or safety benefits of the rules;
2. Whether the rules are mandated by any applicable constitutional or statutory provision;
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements and other factors;
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;
5. Extent to which the regulations exceed national or regional compliance requirements or other standards;
6. Date of last evaluation of the rules and the degree, if any, to which

technology, economic conditions or other factors have changed regulatory activity covered by the rules since the last evaluation; and

7. Other changes or developments since implementation that demonstrate there is no continued need for the rules.

Recommendations range from the general (e.g., identification of processes which need improvement) to the specific (e.g., language changes to existing rules). Because of the size and scope of Michigan's insurance and financial regulations, the Insurance and Finance ARC focused its work on specific areas within the existing statutes and regulations.

c. Process

The Insurance and Finance ARC met for the first time on June 27, 2011, and immediately formed two subcommittees – Insurance (chaired by David Field) and Banking/Other Finance (chaired by Bob Worthington) – to address the issues identified by the committee members. The members of the Insurance and Finance ARC also began soliciting other members of the regulated community (including trade groups, chambers of commerce, companies, and local governments) to identify existing Michigan regulations which were duplicative, obsolete, or unduly burdensome.

Over the course of the next few weeks, the committee members submitted over 50 potential recommendations for consideration by the Insurance and Finance ARC, organized in individual "Issue Papers" and categorized as a "Statutory," "Rules," "Bulletins/Orders," or "Other/General OFIR" issue. Between June 27 and September 20, the Insurance and Finance ARC held three full meetings. The two subcommittees held six meetings, during which they discussed and developed Issue Papers, rejected certain proposals, and ultimately made recommendations to the full Insurance and Finance ARC.

At its meeting on September 20, the Insurance and Finance ARC discussed and voted on the recommendations of each subcommittee, as summarized below.

2. ADDITIONAL OBSERVATIONS

INSURANCE OBSERVATIONS

Michigan's unique product requirements (e.g., unlimited no fault/Personal Injury Protection) along with restrictive statutes governing filings, rate making and underwriting, are outliers when compared with the majority of other states. In addition to the complexity and uniqueness issues, there is a history of an uncertain political climate for insurers and agents, which has made Michigan a challenging place for both to operate and grow their businesses.

Uniqueness and complexity add unnecessary costs to the system – costs which are ultimately borne by the consumer. Complexity borne from restrictive or unique statutes hinders application of insurers' national business models. A national insurance company may be forced to operate a separate business model in Michigan. Such companies are forced to spend money developing and maintaining unique IT systems. Company personnel transfers have to learn a unique set of business and claims processes.

The expenses created by Michigan's system of regulations lead to a reluctance on the part of some insurers to write product here or expand their business here. This results in fewer insurance industry jobs in Michigan, less competition among insurance companies and fewer choices for consumers. Upon learning of these differences, the CEO of one out-of-state insurance company was heard to say "Oh...Michigan." Michigan must create a regulatory environment where insurance and finance companies say "Oh, Michigan!" and want to expand their operations here.

BANKING/OTHER FINANCE

The Banking/Other Finance Subcommittee discussed the regulatory climate at great length. The Subcommittee noted that any discussion of the regulatory climate affecting banking and finance must differentiate between interactions with the Michigan Office of Financial and Insurance Regulation ("OFIR") and the federal regulatory agencies. The Subcommittee believes the overall regulatory climate between OFIR and the banks, credit unions, and mortgage companies of Michigan is healthy. That said, the Subcommittee did identify a few items that could improve the regulatory climate further.

Perhaps the greatest opportunity lies in changing OFIR's mission and examination philosophy from a "writing tickets" mentality to one focused on helping its licensees comply with the law. In order to accomplish this the Subcommittee recommended OFIR initiate more communication through 1) coordinating forums (including webinars and seminars) to encourage more open dialogue outside of the exam environment, 2) increasing OFIR's involvement with the banking, credit union and mortgage company trade groups, 3) improving the efficiency and functionality of the OFIR website, and 4) posting general communications sent to all licensees on the OFIR website.

Another opportunity lies in ensuring a level playing field for all the licensees. The Subcommittee received feedback from various industry sources regarding the uncertainty of the examination process. Some examiners are taking an ultra-conservative approach, while others take a more pragmatic approach to the examination process. To help OFIR provide this additional clarity, the Subcommittee recommended developing reliable, consistent guidance for use by both the industry and OFIR. Such guidance would encourage the equal treatment of all

licensees, a more thorough understanding of the exam process, and an even better regulatory culture in the State of Michigan.

3. RECOMMENDATIONS

The Insurance and Finance ARC was tasked with evaluating and making recommendations for changes to Michigan's insurance and financial regulations, including existing administrative rules, non-rule regulatory actions, regulatory processes, and as necessary, statutes using the criteria provided in Executive Order 2011-5. The following recommendations stand out as exemplifying the administration's goal of regulatory reinvention:

- *Remove significant government-mandated costs that have little benefit to the consumer.* Amend the Insurance Code to remove the requirement that insurers annually provide a detailed booklet to their policy holders describing their rating process. Instead, require insurers to provide a brief summary of that information with each bill and provide detailed information upon request. One insurer indicated that they spend approximately $1 million annually complying with the existing requirement. (Recommendation #23)

- *Remove barriers to innovation.*

    - Amend the Payment of Wages and Fringe Benefits Act to allow many Michigan community banks and credit unions to continue offering popular payroll debit cards. (Recommendation #4)
    - Amend the Insurance Code to allow auto insurers greater flexibility as to the factors they may use in determining rates, so that the risk associated with an individual policy is only charged to that policy-holder. This will result in lower costs for insurers and lower rates for consumers. (Recommendations #21 and 22)
    - Amend the Insurance Code to remove the requirement that affiliated insurance companies follow identical rate setting processes. No other state has such a requirement. This requirement runs contrary to economic logic, hinders merger and acquisition activity and stifles innovation. (Recommendation #25)
    - Rescind rules that impose blanket bans on the use of particular clauses in contracts – discretionary clauses and three types of "nonconforming" clauses – that frustrate new product development and innovation. (Recommendations #33-35)

- *Remove barriers to better customer service.* Amend the Insurance Code to streamline insurance agent workload by providing greater flexibility for agents

in identifying the best insurance value for consumers. (Recommendation #24)

- *Make Michigan more competitive with other states.* Amend the Insurance Code to establish a *file and use* system for approval of all future insurance forms. This will allow insurers to respond more rapidly to changes in the marketplace while still providing OFIR with an opportunity to review each form to ensure that it complies with the Insurance Code. (Recommendation #28)

The following pages contain the final recommendations of the Insurance and Finance ARC. The recommendations are categorized as either "Banking/Other Finance" or "Insurance" and are further categorized by type. There are forty-six recommendations in total - seventeen statutory recommendations, ten rule-related recommendations, fourteen non-rule regulatory action recommendations, and five general recommendations. Of the 46 recommendations, 38 received unanimous support with 8 drawing a dissenting vote. Copies of the final Issue Papers drafted by the committee members, providing background and rationale for each recommendation, are included in *Appendix A* to this report. In several instances, OFIR made additional comments and those have been added to the relevant Issue Papers.

BANKING/OTHER FINANCE

Statutory

Recommendation #1

Subject: Michigan Mortgage Loan Originator Licensing Act (MLOLA)

Recommendation: The Michigan Legislature should make sure that the new HUD rules are harmonious with the MLOLA. They should consider amending the Act to exempt certain actors such as bona-fide non-profit organizations.

Justification: See Issue Paper "Michigan Mortgage Loan Originator Licensing Act" in Appendix A on Pg. 23.

Recommendation #2

Subject: State Savings and Loan Act

Recommendation: The Act and any associated rules should be repealed as they are obsolete and unused.

Justification: See Issue Paper "State Savings and Loan Act" in Appendix A on Pg. 24.

Recommendation #3

Subject: Electronic Funds Transfers Act (EFTA)

Recommendation: Review the Michigan EFTA to harmonize its requirements with those of federal Regulation E and repeal provisions of the Michigan Act that are duplicative.

Justification: See Issue Paper "The Electronic Funds Transfer Act 322 of 1978 is duplicative of federal law" in Appendix A on Pg. 25.

*Lorray Brown did not concur in this recommendation.

Recommendation #4

Subject: Michigan Payment of Wages and Fringe Benefits Act

Recommendation: Amend MCL 408.476 to define a "payroll debit card" as "a stored value card issued by **or on behalf of** a federally insured . . . ." Not all community banks and credit unions have the resources to issue the cards themselves.

Justification: See Issue Paper "Payment of Wages and Fringe Benefits Act 390 of 1978" in Appendix A on Pg. 26.

Recommendation #5

Subject: Conversion of Negotiable Instruments

Recommendation: Amend MCL 600.2919a to exempt from the statute conversion of negotiable instruments governed by the Michigan Uniform Commercial Code.

Justification: See Issue Paper "Conversion of Negotiable Instruments (MCL 440.3420 versus MCL 600.2919a)" in Appendix A on Pg. 27.

* Lorray Brown did not concur in this recommendation.

Recommendation #6

Subject: Michigan First Mortgage Liens

Recommendation: Amend the Mortgage Brokers, Lenders and Servicers Licensing Act (PA 173 of 1987), Consumer Mortgage Protection Act (PA 660 of 2002), and Mortgage Lending Practices Act (PA 135 of 1977) by adding the following:

This act does not apply to the following:

1. Extensions of credit to government, governmental agencies or instrumentalities, or to organizations.

2. A mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

3. An extension of credit primarily for a business, a commercial, or an agricultural purpose.

Similar language is already contained in the Secondary Mortgage Loan Act (PA 125 of 1981) and Mortgage Loan Originator Licensing Act (PA 75 of 2009).

Justification: See Issue Paper "Focus state regulation of Michigan First Lien Mortgages on Consumer Purpose Transactions..." in Appendix A on Pg. 28.

Rules

Recommendation #7

Subject: Credit Union Rule 3

Recommendation: This rule governing credit union credit committee and board of directors' lending activity should be rescinded.

Justification: See Issue Paper "Review of OFIR – Credit Union Rules" in Appendix A on Pg. 30.

Recommendation #8

Subject: Credit Union Rule 4

Recommendation: The rule regarding accounting for investments in mutual funds should be rescinded and accounting for these types of investments should be governed by GAAP.

Justification: See Issue Paper "Review of OFIR – Credit Union Rules" in Appendix A on Pg. 30.

Recommendation #9

Subject: Credit Union Rule 7

Recommendation: The rule should be rescinded and minimum required allowances for loan and lease losses should be governed by GAAP and interagency guidance.

Justification: See Issue Paper "Review of OFIR – Credit Union Rules" in Appendix A on Pg. 30.

Recommendation #10

Subject: Credit Union Rule 8

Recommendation: This rule regulating OFIR access to records duplicates the requirements of MCL 408.4 and should be rescinded.

Justification: See Issue Paper "Review of OFIR – Credit Union Rules" in Appendix A on Pg. 30.

Bulletins/Letters/Orders/Etc.

Recommendation #11

Subject: Bank Bulletins

Recommendation: OFIR should review all bank bulletins that pre-date adoption of the Banking Code of 1999 and rescind or update as appropriate and the OFIR website should be reconfigured to include a page for active, current materials and an archive page for superseded materials.

Justification: See Issue Paper "Bank Bulletins" in Appendix A on Pg. 33.

Recommendation #12

Subject: Credit Union Bulletin 2005-14-CU

Recommendation: This bulletin has been superseded by Bulletin 2007-05-CU. The OFIR website should be reconfigured to include a page for active, current materials and an archive page for superseded materials such as this bulletin.

Justification: See Issue Paper "Review of Credit Union Bulletins and Letters" in Appendix A on Pg. 34.

Recommendation #13

Subject: Credit Union Bulletin 2004-01-OFIS

Recommendation: This bulletin has been superseded by Bulletin 2008-08-BT. The OFIR website should be reconfigured to include a page for active, current materials and an archive page for superseded materials such as this bulletin.

Justification: See Issue Paper "Review of Credit Union Bulletins and Letters" in Appendix A on Pg. 34.

Recommendation #14

Subject: Credit Union Bulletin 2005-09-CU

Recommendation: This bulletin references Credit Union Rule 7 and will need to be modified or withdrawn if that rule is rescinded.

Justification: See Issue Paper "Review of Credit Union Bulletins and Letters" in Appendix A on Pg. 34.

Recommendation #15

Subject: Credit Union Letter 2006-CU-02

Recommendation: This letter entitled "Report of Credit Union Officials" is outdated (the report has been replaced with electronic updates to the Call Report) and should be withdrawn.

Justification: See Issue Paper "Review of Credit Union Bulletins and Letters" in Appendix A on Pg. 34.

Recommendation #16

Subject: Credit Union Letter 2005-CU-11

Recommendation: OFIR should review and modify, if necessary, this letter in light of recent changes to national (NCUA) Reg Flex rules.

Justification: See Issue Paper "Review of Credit Union Bulletins and Letters" in Appendix A on Pg. 34.

Recommendation #17

Subject: Credit Union Letter 2002-CU-09

Recommendation: This letter references Credit Union Rule 7 and will need to be modified or withdrawn if that rule is rescinded.

Justification: See Issue Paper "Review of Credit Union Bulletins and Letters" in Appendix A on Pg. 34.

Other/General OFIR

Recommendation #18

Subject: Lack of Enforcement

Recommendation: More attention should be directed towards of the problem of unregulated financial services providers to improve the environment for legitimate providers, including the development of more public service announcements advising consumers of certain activities.

Justification: See Issue Paper "Lack of Enforcement" in Appendix A on Pg. 35.

INSURANCE

Statutory

Recommendation #19

Subject: PA 350 of 1980

Recommendation: The legislature should examine the BCBSM rate review process in a larger context in light of the health care changes nationally such as PPACA and HIPAA.

Justification: See Issue Paper "Recommendation to Reform Rate Filing Process under PA 350 of 1980" in Appendix A on Pg. 36.

Recommendation #20

Subject: MCL 500.1238

Recommendation: The statute should be amended to remove the $3 fee charged to an insurance producer each time they report a change of their mailing address.

Justification: See Issue Paper "Producer change-of-address fee" in Appendix A on Pg. 38.

Recommendation #21

Subject: MCL 500.2110a

Recommendation: Amend the statute to read "If uniformly applied to all its insureds, ~~an insurer may establish and maintain a premium discount plan~~ an insurer may utilize factors in addition to those permitted by section 2111 for insurance if the plan is consistent with the purposes of this act . . . . "

Justification: See Issue Paper "MCL 500.2110a - Premium discount plan." in Appendix A on Pg. 39.

Recommendation #22

Subject: MCL 500.2111

Recommendation: Amend the statute to add "(10) An insurer may use factors in addition to those permitted by this section for insurance if the plan is consistent with the purposes of this act and reflects reasonably anticipated reductions or increases in an individual insured's losses or expenses."

Justification: See Issue Paper "MCL 500.2111 - Permissible rating criteria for development of personal lines home and auto insurance rates" in Appendix A on Pg. 40.

Recommendation #23

Subject: MCL 500.2112

Recommendation: The detailed information requirement should be revised to require that the insurer (1) provide a one-page (or less) summary of the detailed information they are required by statute to make available to a consumer with each bill and (2) provide that detailed information on request.

Justification: See Issue Paper "MCL 500.2112 - Written notice to policyholder; time; contents" in Appendix A on Pg. 41.

Recommendation #24

Subject: MCL 500.2116

Recommendation: Eliminate the requirement that an agent who represents more than one insurer provide the lowest available quotation for automobile or home insurance by amending MCL 500.2116 (1) (a) to read "Provide each eligible person seeking automobile insurance or home insurance the ~~lowest available~~ **a** premium quotation for the forms . . . " and (b) to read "Inform the eligible person of the number of insurers that he or she represents. If the agent represents additional insurers from which the eligible person may obtain insurance, the agent ~~shall~~ **may** provide . . . "

Justification: See Issue Paper "Requirement to provide the lowest available quote for auto/home insurance" in Appendix A on Pg. 42.

* Lorray Brown did not concur in this recommendation.

Recommendation #25

Subject: MCL 500.2117, 2119 and 2120

Recommendation: These statutes require that affiliated insurance companies use the same underwriting rules and rating systems when they offer identical coverage and should be amended to eliminate this requirement. No other state has such a requirement.

Justification: See Issue Paper "MCL 500.2117 through 2120 - Underwriting Rules for Home and Auto" in Appendix A on Pg. 43.

Recommendation #26

Subject: MCL 500.2121

Recommendation: This statute regulating dwelling inspections should be amended to eliminate the criteria prohibitions relating to the structure but retaining the list of prohibited criteria -- race, color, etc. -- contained in (e) as set forth in pg. 38 of the report.

Justification: See Issue Paper "MCL 500.2121, Home Inspection Criteria" in Appendix A on Pg. 44.

Recommendation #27

Subject: MCL 500.3109, 3109a and 3113

Recommendation: The statutes should be amended to eliminate the arbitrary deductible cap imposed by MCL 500.3109, make the offering of "coordinated medical policy" discounts permissive under MCL 500.3109a and clarify the language used in MCL 500.3113(a) to prohibit PIP coverage for passengers in a car that was taken illegally if that person had reason to believe that the vehicle was illegally taken.

Justification: See Issue Papers "MCL 500.3109 - Offer of Deductibles," "MCL 500.3109a - Mandatory offer of no-fault auto 'coordinated medical policy' premium discounts," and "MCL 500.3113(a) - Clarify prohibition of PIP coverage for those injured in an unlawfully taken vehicle" in Appendix A on Pgs. 45, 46 and 47, respectively.

* Lorray Brown did not concur in the recommendations made with respect to MCL 500.3109 and 500.3109a but did concur with the recommendation regarding MCL 500.3113(a).

Recommendation #28

Subject: MCL 500.2236(1)

Recommendation: The statute should be amended to establish a *file and use* system for all future insurance forms with a provision deeming forms approved 30 days after filing. Currently, the majority of forms require prior approval but are deemed approved after 30 days if OFIR has not acted.

Justification: See Issue Paper "MCL 2236(1) - Prior Approval of Policy Forms" in Appendix A on Pg. 48.

Recommendation #29

Subject: MCL 500.2213

Recommendation: This statute requires that an insured be given the opportunity to present their grievance to the board of directors or other managerial body of an insurance company. The statute should be amended by striking the current language in (e) and replacing it with "Provides an insured or enrollee the right to present a grievance orally or in writing before a designated impartial internal decision maker."

Justification: See Issue Paper "Requirement 500.2213 . . . ." in Appendix A on Pg. 49.

Rules

Recommendation #30

Subject: R 500.3(a)(i)

Recommendation: This rule specifies the curriculum that property and casualty (P & C) agents are required to master for licensure. The specific provision identified requires knowledge of the obsolete *Michigan standard fire policy*. The rule should be revised to include a general reference to *fire insurance*.

Justification: See Issue Paper "Licensing curriculum . . . ." in Appendix A on Pg. 50.

Recommendation #31

Subject: R 500.601-606

Recommendation: These rules should be rescinded and replaced by adoption of the NAIC 2007 "Life Insurance and Annuities Replacement Model Legislation" in statutory form. It is the committee's understanding that the MI Rules are substantially similar to the NAIC model and should be updated by adoption of the most current model. The model does not contain a rebuttable presumption that would give rise to revocation of an agent's license. More than half of the states have adopted the current NAIC model.

Justification: See Issue Paper "Replacement of Life Insurance Policies" in Appendix A on Pg. 51.

Recommendation #32

Subject: R 500.2151-2155

Recommendation: These rules prohibiting the use of credit scores to determine insurance discounts should be rescinded in light of the Michigan Supreme Court's ruling that the practice was permissible under the Insurance Code.

Justification: See Issue Paper "R 500.2151-2155 (2005) Clarification of Reasonable Classification System Under Insurance Code" in Appendix A on Pg. 52.

Recommendation #33

Subject: R 500.2201-2202

Recommendation: These rules prohibiting the use of discretionary clauses in forms should be rescinded and the Commissioner is encouraged to issue a bulletin on the subject if one is needed.

Justification: See Issue Paper "Administrative Rules: Insurance Policy Forms – Discretionary Clauses" in Appendix A on Pg. 53.

* Lorray Brown did not concur in this recommendation.

Recommendation #34

Subject: R 500.2211-2212

Recommendation: These rules prohibiting the use of shortened limitation of action clauses in forms should be rescinded and the Commissioner is encouraged to issue a bulletin on the subject if one is needed.

Justification: See Issue Paper "Administrative Rules: Insurance Policy Forms – Shortened Limitation of Action Clauses" in Appendix A on Pg. 54.

* Lorray Brown did not concur in this recommendation.

Recommendation #35

Subject: R 500.2231 – 500.2232

Recommendation: These rules prohibiting the use of certain nonconforming clauses in forms should be rescinded and the Commissioner is encouraged to issue a bulletin on the subject if

one is needed.

Justification: See Issue Paper "Administrative Rules: Insurance Policy Forms – Nonconforming Clauses" in Appendix A on Pg. 55.

* Lorray Brown did not concur in this recommendation.

Bulletins/Letters/Orders/Etc.

Recommendation #36

Subject: Bulletin 2003-01-INS

Recommendation: This bulletin providing guidelines for the use of credit scores to determine insurance discounts should be revised or withdrawn in concert with the passage of legislation based on the NCOIL model regulating the practice.

Justification: See Issue Paper "Bulletin 2003-01-INS" in Appendix A on Pg. 56.

Recommendation #37

Subject: Bulletin 2003-02-INS

Recommendation: This bulletin providing updated guidelines for the use of credit scores to determine insurance discounts should be revised or withdrawn in concert with the passage of legislation based on the NCOIL model regulating the practice.

Justification: See Issue Paper "Bulletin 2003-02-INS" in Appendix A on Pg. 57.

Recommendation #38

Subject: Bulletin 2004-06-INS

Recommendation: This bulletin informing insurers of the effective date of the rules prohibiting the use of credit scores to determine insurance discounts should be withdrawn in light of the Michigan Supreme Court's ruling that the rules in question were illegal and that the practice is permissible under the Insurance Code.

Justification: See Issue Paper "Bulletin 2004-06-INS" in Appendix A on Pg. 58.

Recommendation #39

Subject: Bulletin 2009-01-INS

Recommendation: This bulletin implementing a voluntary automobile insurance rate freeze

program effective from February 3, 2009 to February 3, 2010 has expired and should be withdrawn.

Justification: See Issue Paper "Bulletin 2009-01-INS" in Appendix A on Pg. 59.

Recommendation #40

Subject: Order Nos. 05-060-M and 06-008-M

Recommendation: Rescind both and request that OFIR provide guidance on Uninsured/Underinsured Motorist Clauses.

Justification: See Issue Papers "Prohibition Order No. 05-060-M — December 16, 2005" and "Order No. 06-008-M — April 4, 2006" in Appendix A on Pg. 60 and 61.

* Lorray Brown did not concur in this recommendation.

Recommendation # 41

Subject: Bulletin 2009-11-INS and Order 09-023-M

Recommendation: The order and bulletin rescinded the 1997 Exemption Order as it pertained to property and casualty (automobile and home) forms. Rescind both and encourage OFIR towards the approach embodied in the 1997 Exemption Order which exempted forms from filing and prior approval.

Justification: See Issue Papers "Bulletin 2009-11-INS" and "Order No. 09-023-M — May 22, 2009" in Appendix A on Pg. 62 and 63.

Recommendation #42

Subject: Bulletin 2010-02-INS and Order 10-005-5

Recommendation: The order and bulletin rescinded the remainder of the 1997 Exemption Order making all forms subject to filing and prior approval. Rescind both and encourage OFIR towards the approach embodied in the 1997 Exemption Order which exempted forms from filing and prior approval.

Justification: See Issue Papers "Bulletin 2010-02-INS" and "Order No. 10-005-M—January26, 2010" in Appendix A on Pg. 64 and 65.

Other/General OFIR

Recommendation #43

Subject: Insurance Roundtable

Recommendation: Encourage OFIR to participate in industry roundtables to discuss regulatory issues.

Justification: See Issue Paper "Regulator / Industry Roundtable Environment" in Appendix A on Pg. 66.

Recommendation #44

Subject: Branch FEIN Number Requirement

Recommendation: Encourage OFIR to continue to work towards resolution of this issue.

Justification: See Issue Paper "Requirement that insurance agency branch locations must be separately licensed with different name and FEIN number" in Appendix A on Pg. 67.

Recommendation #45

Subject: MCL 500.225

Recommendation: Encourage OFIR to administer MCL 500.225 in an open and transparent manner to encourage legislators to participate in insurance activities coordinated by insurance and legislative associations including the NAIC and NCOIL.

Justification: See Issue Paper "Insurance Bureau Fund – Good Fiscal Management, Transparency, and strengthening Michigan's role in national policy forums" in Appendix A on Pg. 68.

Recommendation #46

Subject: MEDC Workers Compensation Activities

Recommendation: Encourage the MEDC to cease providing services in the workers compensation insurance marketplace.

Justification: See Issue Paper "MEDC Activities – Occupying Market Space" in Appendix A on Pg. 69.

APPENDIX A

ISSUE PAPERS FOR FINAL RECOMMENDATIONS

Recommendation	Subject	Page
1	Michigan Mortgage Loan Originator Licensing Act	23
2	State Savings and Loan Act	24
3	Electronic Funds Transfer Act, PA 322 of 1978	25
4	Payment of Wages and Fringe Benefits Act, PA 390 of 1978	26
5	MCL 600.2919a	27
6	Michigan First Lien Mortgages	28
7-10	Credit Union Rules	30
11	Bank Bulletins	33
12-17	Credit Union Bulletins and Letters	34
18	Lack of Enforcement	35
19	Reform Rate Filing Process under PA 350 of 1980	36
20	MCL 500.1238	38
21	MCL 500.2110a	39
22	MCL 500.2111	40
23	MCL 500.2112	41
24	MCL 500.2116	42
25	MCL 500.2117, 2119 and 2120	43
26	MCL 500.2121	44
27	MCL 500.3109	45
27	MCL 500.3109a	46
27	MCL 500.3113(a)	47
28	MCL 2236(1)	48
29	MCL 500.2213	49
30	R 500.3	50
31	R 500.601 – 500.606	51
32	R 500.2151 – 500.2155	52
33	R 500.2201 – 500.2202	53
34	R 500.2211 – 500.2212	54
35	R 500.2231 – 500.2232	55
36	Bulletin 2003-01-INS	56
37	Bulletin 2003-02-INS	57
38	Bulletin 2004-06-INS	58
39	Bulletin 2009-01-INS	59
40	Order No. 05-060-M	60
40	Order No. 06-008-M	61
41	Bulletin 2009-11-INS	62
41	Order No. 09-023-M	63
42	Bulletin 2010-02-INS	64
42	Order No. 10-005-M	65
43	Regulator / Industry Roundtable Environment	66

44	FEIN Number per Branch Requirement	67
45	Insurance Bureau Fund	68
46	MEDC Activities – Occupying Market Space	69

Recommendation #1

Subject: The Michigan Mortgage Loan Originator Licensing Act (MLOLA)

OFIR Division: Banking/Finance

Background and Description of Issue: In 2008, Congress passed the Secure And Fair Enforcement Mortgage Licensing Act (SAFE Act). The SAFE Act is designed to reduce problems with mortgage brokers and other loan originators. The SAFE Act requires all states to impose minimum licensing and registration requirements for residential mortgage loan originators. The SAFE Act defines "loan originator" as an individual who takes applications and "offers or negotiates" loan terms for compensation. In 2009, Michigan enacted the Mortgage Loan Originator Licensing Act to comply with the SAFE Act which included a similar definition for a mortgage loan originator.

This definition has the unintended consequence of including non-profit housing counselors and consumer attorneys in the definition of loan originators, thus imposing on them licensing and registration requirements. Non-profit housing counselors receive either HUD funds or MSHDA funds to provide free counseling services to homeowners. Given the foreclosure crisis, it is common for consumer attorneys to negotiate loan terms in the context of helping a homeowner get a loan modification or settle a predatory lending case.

Proposed Solution: The Michigan Legislature should make sure that the new HUD rules are harmonious with the MLOLA. They should consider amending the Act to exempt certain actors such as bona-fide non-profit organizations.

OFIR comment: While there may be duplications between the state MLOLA and the federal SAFE Act, we do not believe any action is necessary, as the MLOLA was, in fact, required by the SAFE Act. With regard to exempting certain non-profit organizations, OFIR is concerned about a full exemption based on a name/title because the activity of the group or person is what is important. We would be willing to work with the industry to determine an appropriate course of action.

Recommendation #2

Subject: State Savings and Loan Act

OFIR Division: Bank and Trust Division

Background and Description of Issue: The State Savings and Loan Act does not appear to serve any purpose. No institutions are currently or expected to be chartered under the Act.

Proposed Solution: The Act and any associated rules should be repealed as they are obsolete and unused.

Recommendation #3

Subject: The Electronic Funds Transfer Act 322 of 1978 is duplicative of federal law.

OFIR Division: Bank and Trust Division; Credit Union Division

Background and Description of Issue: Federal Regulation E, Electronic Funds Transfers (12 CFR 205) establishes the rights, liabilities, and responsibilities of parties in electronic funds transfers and protects consumers when they use such systems. Michigan's Electronic Funds Transfer Act 322 of 1978 is similar in spirit to Federal Regulation E, but the duplication results in confusion and time consuming and costly interpretations of the minor differences.

Proposed Solution: Review the Michigan EFTA to harmonize its requirements with those of federal Regulation E and repeal provisions of the Michigan Act that are duplicative.

Recommendation #4

Subject: Payment of Wages and Fringe Benefits Act 390 of 1978

OFIR Division: Bank and Trust Division; Credit Union Division

Background and Description of Issue: Section 408.476 defines "Federally insured financial institution" as a state or nationally chartered bank... which maintains a principal office or branch office located in this state under the laws of this state or the United States. Section 408.476 goes on to define "Payroll debit card" as "a stored value card issued by a federally insured financial institution that provides . . . . "

This is problematic because the vast majority of community banks and credit unions don't issue their own cards because the cost is prohibitive. Rather, they use out of state third party vendors to issue the cards on their behalf. As a result, many community banks and credit unions will need to stop offering payroll debit cards.

Proposed Solution: Amend MCL 408.476 to define a "payroll debit card" as "a stored value card issued by **or on behalf of** a federally insured . . . ." Not all community banks and credit unions have the resources to *issue* the cards themselves.

OFIR comment: We have no objection to the amendment, but are currently reviewing the possibility of whether the statute as written can be interpreted to encompass this activity.

Recommendation #5

Subject: Conversion of Negotiable Instruments (MCL 440.3420 versus MCL 600.2919a)

OFIR Division: Bank and Trust Division

Background and Description of Issue: Negotiable instruments are governed by Article 3 of the Uniform Commercial Code ("UCC"). Similarly, bank deposits and collections are governed by Article 4 of the UCC. Every state in the U.S. had adopted some form of the UCC. It is intended to provide a uniform set of laws for every state in the nation. In addition, the UCC is intended to govern certain areas instead of the common law. There is a specific provision in the UCC displacing conflicting state law, and there is also a Michigan Supreme Court ruling on this point.

The UCC contains a specific provision governing legal claims for conversion of negotiable instruments (MCL 440.3420). Notably, section 3-420 contains its own measure of damages that a plaintiff can receive if a bank converts a check— the plaintiff is essentially limited to the face amount of the check. However, Michigan has another statute, MCL 600.2919a, which governs all other types of conversion in Michigan. This is typically referred to as a "statutory conversion" claim in Michigan. If a plaintiff is successful in a statutory conversion case, MCL 600.2919a provides for treble damages and attorneys fees (both being non-recoverable under the UCC). In fact, the plaintiff is even entitled to attorneys fees for any related appeals.

Further, there is a Michigan Court of Appeals case from 2009 (*New Properties, Inc v Kitchen*) which held that a plaintiff suing a bank for conversion can receive treble damages and attorneys fees under MCL 600.2919a. Some commentators believe the court's decision is wrong, because if the two statutes were applied in the manner they were intended, only UCC section 3-420 would apply to the conversion of checks, and there would be no potential for treble damages and attorneys fees for banks. Another consequence of the *New Properties* case is that a bank has a disincentive to appeal an adverse ruling from the trial court, because then you risk having to pay an even greater amount if you appeal and lose.

Proposed Solution: Amend MCL 600.2919a to exempt from the statute conversion of negotiable instruments governed by the Michigan Uniform Commercial Code.

Recommendation #6

Subject: Focus state regulation of Michigan First Lien Mortgages on Consumer Purpose Transactions so as not to exceed federal laws, rules, and regulations by exempting credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

OFIR Division: Consumer Finance

Background and Description of Issue: Federal Consumer Protection Laws such as the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) regulate "Consumer Purpose" mortgage transactions on 1-4 family dwellings: The adjective "consumer," used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes. Furthermore, Federal Law (TILA & RESPA) state:

> **§ 104. Exempted transactions** --This title does not apply to the following:
>
> (1) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

Michigan Statutes regulating first lien mortgage loans omit the preceding exception contained in federal laws and regulations. This creates unnecessary and unduly burdensome regulation on business, commercial, and agricultural first mortgage lenders and contributes to a shortage of available credit. Industry is also faced with a reporting burden and licensing fees that exceed (or do not exist) in other states. The higher costs associated with this licensing and reporting that is unnecessary under federal law increases costs to business borrowers and further impedes our state's recovery.

Proposed Solution: Amend the Mortgage Brokers, Lenders and Servicers Licensing Act (PA 173 of 1987), Consumer Mortgage Protection Act (PA 660 of 2002), and Mortgage Lending Practices Act (PA 135 of 1977) by adding the following:

> This act does not apply to the following:
>
> 1. Extensions of credit to government, governmental agencies or instrumentalities, or to organizations.
>
> 2. A mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
>
> 3. An extension of credit primarily for a business, a commercial, or an agricultural purpose.

Similar language is already contained in the Secondary Mortgage Loan Act (PA 125 of 1981) and

Mortgage Loan Originator Licensing Act (PA 75 of 2009).

OFIR comment: OFIR does not object to the purpose of this recommendation, but has concerns with this proposed amendment. We would be interested in meeting with the industry and working toward a mutually agreeable resolution.

Recommendations #7-10

Subject: Review of OFIR – Credit Union Rules

OFIR Division: Credit Union Division

Background and Description of Issue: In addition to the Michigan Credit Union Act (MCUA) (PA 215 effective June 1, 2004), state chartered credit unions are currently subject to eight (8) rules established in accordance with the provisions of Section 490.206 of the MCUA. Section 490.206 of the MCUA stipulates: "The commissioner may promulgate rules or issue orders or declaratory rulings for the enforcement and administration of this act. The commissioner shall promulgate rules and issue orders and declaratory rulings pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328."

Generally the rules are thought to be sound and in most cases act as additional guidance for credit unions. However, upon review, it appears that a few of the rules could be updated to more accurately reflect the current economic environment or accounting environment, while other rules are no longer necessary. Each of the rules which could be modified is discussed below.

Rule 3 - Credit committee or board of directors lending activity; recording requirements (Recommendation #7)

RULE: The credit committee shall maintain the minutes of all actions taken by the committee with regard to lending activity. If there is not credit committee, the board of directors shall maintain the minutes of all actions taken by the board with regard to lending activity. The minutes shall contain, at a minimum all of the following items of business dealing with lending activity:

(a) The names of the credit committee or board members in attendance while the credit committee or board is dealing with lending activity.

(b) Loans and lines of credit approved or rejected, including, at a minimum, all of the following information:

i. The member's name and account number.

ii. The amount of the proposed loan.

iii. Whether the proposed loan is secured or unsecured.

iv. The action taken on the proposed loan.

(c) A report of the actions taken by each loan officer on loan requests since the last meeting of the credit committee or, if there is no credit committee, the board of directors.

(d) Extension agreements approved or denied.

(e) Releases of security.

DISCUSSION: This rule has created cumbersome reporting requirements for some credit unions. Some credit unions have implemented this rule exactly as it is written and provide detailed monthly reports to the Board of Directors on all loan originations, denials, extensions and releases of security by loan officer. This information is often time-consuming to prepare and it appears of little value to have Boards review this information at the level of detail requested in the Rule.

Upon discussion with OFIR – Credit Union Division leadership, it is not the intent of OFIR to actually have this level of reporting. It appears that better reporting would include monthly or quarterly reporting of this information in the aggregate, identifying perhaps loans by collateral type, credit score of borrower, duration or other characteristics that allow the Board of Directors to review the overall risk in the loan portfolio and new risk being introduced monthly or quarterly.

Rule 4 - Accounting requirements for investments in mutual funds (Recommendation #8)

RULE: A credit union shall record each investment in shares or certificates of an open-end management investment company (mutual fund) at market value, determined at the end of each month.

DISCUSSION: Consideration should be given to the elimination of this rule. Accounting treatment for investments is more appropriately governed by generally accepted accounting principles (GAAP). When regulatory rules define accounting methodologies there is a risk of a difference in accounting treatment for GAAP reporting and regulatory reporting (RAP). Differences in GAAP and RAP should be eliminated where possible.

Additionally, GAAP does require mutual fund investments to be classified as available-for-sale or trading, both of which would require the asset to be recorded at market value and thus the rule is duplicative of GAAP standards.

Rule 7 - Minimum required allowance for loan and lease loss (Recommendation #9)

RULE: This rule discusses the methodologies that credit unions should use when establishing the adequacy of the allowance for loan loss. The rule perhaps provides guidance to less sophisticated credit unions in determining the adequacy of the allowance; however in its present form some of its provisions appear outdated. The two most significant deficiencies are the method in which the experience component is calculated and a failure to require consideration of the current economic environment.

Section (1) (b) of the rule states "The experience component is calculated as follows: The average of net loan and lease losses for the previous 5 years shall be calculated. This "experience" ratio shall be applied to the estimated total loan and lease balance to calculate the estimated loss in the remaining loan and lease portfolio (outside of specific reserves on troubled

credits). The average net loan and lease loss ratio shall be updated at the each year end".

DISCUSSION: In determining the inherent risk of loss on loans in the portfolio, it is prudent that management perform an analysis of the current external factors effecting the collectability of loans and the characteristics of homogenous pools subdivided to the greatest degree possible, whether by credit score or collateral type or some other characteristic that allows for proper segmentation to allow for the establishment of reserves. In a turbulent economic environment, establishing reserves based on a 5 year look back does not appear proper.

Guidance for establishing the loan loss reserve is provided in various accounting rules and thus being in a Rule does not appear necessary. However, if determined that it is important to maintain this Rule to provide guidance to credit unions, the Rule should be revised to provide improved guidance on establishing the allowance for loan loss.

Rule 8 - Access to records. (Recommendation #10)

RULE: A credit union may not purchase or receive recordkeeping services from an outside party unless both the credit union and the outside party, including any subcontractor, furnish the commissioner with an assurance in writing that the performance of these services will be subject to examination and regulation to the same extent as if the services were performed by the credit union on its own premises.

DISCUSSION: This Rule could be eliminated as Section 408.4 of the MCUA already requires this. 408 (4) states "A domestic credit union shall not purchase automated information processing services from a vendor unless the domestic credit union and the vendor, and any subcontractors of the vendors, furnish the commissioner with an assurance in writing that the performance of the services is subject to examination and regulation to the same extent as if the services were performed by the domestic credit union on its own premises."

Recommendation #11

Subject: Bank Bulletins

OFIR Division: Bank and Trust

Background and Description of Issue: All of the bulletins that pre-date adoption of the Banking Code of 1999 are dated or obsolete.

- Bank Bulletins 1, 2, 4 and 24 have been rescinded.
- Bank Bulletins 3-7, 13, 14, 25-31, 34 and 35 refer to the superseded Banking Code of 1969.
- Bank Bulletin 8 needs to be revised in light of recent FDIC guidance on repossessions.
- Bank Bulletin 9 needs to be harmonized with the Banking Code of 1999.
- Bank Bulletin 10 needs to be comprehensively revised as it references repealed statutes and does not reflect recent changes to statutes regarding trusts, EPIC, etc.
- Bank Bulletins 11, 12, 15-23, 33 and 36 contain dated references and need to be generally brought up to date.
- Bank Bulletin 32 needs to be reviewed against current FDIC requirements.

Additionally, a number of bulletins should include notations that they supersede other bulletins and vice versa.

- Bank Bulletin 2011-13-BT supersedes Bank Bulletin 2010-15-BT.
- Bank Bulletin 2011-05-BT supersedes Bank Bulletin 2009-16-BT.
- Bank Bulletin 2011-13-BT supersedes Bank Bulletin 2010-15-BT.
- Bank Bulletin 2010-15-BT supersedes Bank Bulletin 2009-12-BT.
- Bank Bulletin 2009-12-BT supersedes Bank Bulletin 2008-08-BT.
- Bank Bulletin 2008-09-BT supersedes Bank Bulletin 2007-06-BT.
- Bank Bulletin 2007-06-BT supersedes Bank Bulletin 2006-15-BT.
- Bank Bulletin 2008-08-BT supersedes Bank Bulletin 2004-01-OFIS.
- Bank Bulletin 2003-03-BT supersedes Bank Bulletin 2002-04-BT.
- Bank Bulletin 36 supersedes Bank Bulletin 24.

Finally, Bank Bulletin 2009-16-BT is not currently available on OFIR's website. This bulletin has been superseded by Bank Bulletin 2011-05-BT and is referenced by Bank Bulletin 2008-16-BT.

Proposed Solution: OFIR should review all bank bulletins that pre-date adoption of the Banking Code of 1999 and rescind or update as appropriate and the OFIR website should be reconfigured to include a page for active, current materials and an archive page for superseded materials.

OFIR comment: We would welcome input from the industry with regard to any specific bulletins.

Recommendations #12-17

ORR – Banking/Other Finance Rules Advisory Committee
Review of Credit Union Bulletins and Letters

Credit Union Bulletins

- Bulletin 2005-14-CU has been superseded by Bulletin 2007-05-CU. This needs to be indicated on the website and the hyperlink needs to be removed. (Recommendation #12)

- Bulletin 2004-01-OFIS has been superseded by Bulletin 2008-08. This needs to be indicated on the website and the hyperlink needs to be removed. (Recommendation #13)

- Bulletin 2005-09 – "In the Matter of Allowance and Reserve Accounts" will need to be modified if Rule 7 is changed or deleted. The bulletin references CU Rule #7. (Recommendation #14)

Credit Union Letters

- Letter 2006-CU-02 "Report of Credit Union Officials" is now outdated. The Report of Officials has been replaced with electronic updates to the Call Report. (Recommendation #15)

- Letter 2005-CU-11 "Reg Flex and Its Impact on State Chartered Credit Unions – OFIR will be reviewing this letter in light of more recently imposed Reg Flex rules at the national (NCUA) level. Modifications if necessary will be made. (Recommendation #16)

- Letter 2002-CU-09 "Impact on NCUA's IRPS 02-03 on Allowance for Loan and Lease Loss Calculations" will need to be modified if Rule 7 is changed or deleted. The letter references CU Rule #7. (Recommendation #17)

Recommendation #18

Subject: Lack of Enforcement

OFIR Division: Banking/Finance

Background and Description of Issue: There are increasing numbers of companies offering consumers assistance with their debt load or foreclosure situation for a fee. These companies often promise to erase bad credit on a consumer's credit report. The companies promise to negotiate a consumer's debt, save a homeowner's home from foreclosure, or modify a homeowner's loan. While not all of these companies are unscrupulous, some generally cannot deliver on what they promise. The reality is that these companies offer these services, accept the fees from the consumers, and do very little, to no work at all.

In Michigan, there a number of statutes that prohibit this behavior. For example, the Michigan Credit Services Protection Act (MCL 445.1821 et seq.) prohibits these companies from accepting fees upfront before completing all services. Also, the Michigan Consumer Protection Act (MCL 445.901 et seq.) prohibits unfair and deceptive practices.

Proposed Solution: More attention should be directed towards of the problem of unregulated financial services providers to improve the environment for legitimate providers, including the development of more public service announcements advising consumers of certain activities.

Recommendation #19

Subject: Recommendation to Reform Rate Filing Process under PA 350 of 1980.

OFIR Division:

Background and Description of Issue: Public Act 350 of 1980 is the Nonprofit Health Care Corporation Reform Act and serves as the regulating statute for Blue Cross Blue Shield of Michigan. Section 608(1) contains the **prior approval** language for the **rate filing process**.

> *"The rates charged to nongroup subscribers for each certificate shall be filed in accordance with section 610 and shall be subject to the prior approval of the commissioner. Annually, the commissioner shall approve, disapprove, or modify and approve the proposed or existing rates for each certificate subject to the standard that the rates must be determined to be equitable, adequate, and not excessive, as defined in section 609. The burden of proof that rates to be charged meet these standards shall be upon the health care corporation proposing to use the rates."*

Section 610, referred to in the quotation, sets forth the timeframes BCBSM must follow for rate filings. Rates may be increased no more frequently than annually. A proposed rate must be filed at least 120 days before its proposed effective date. Once a rate is filed, OFIR has 30 days to determine if the filing is in material and substantial compliance with the Act and complete. If the Commissioner determines that a rate filing does not comply with the Act or is otherwise incomplete there is a prescribed process to be followed to complete the filing. If OFIR determines that the rate filing is in compliance with the Act and complete, the Commissioner must notify BCBSM and other interested persons. The Commissioner's notice shall state that a person with "standing" can request an evidentiary hearing within 60 days of receipt of the notice. BCBSM must provide this same notice by placing advertisements in newspapers that serve geographic areas where significant numbers of subscribers reside.

A person has standing to request a hearing if there are reasonable grounds to believe that the person could be "aggrieved" by the proposed rate. The Attorney General also has standing to object to a rate filing. Under the Act, hearings are to commence not more than 30 days after a request for hearing is made. Hearings are conducted by an "independent hearing officer" appointed by the Commissioner. The person appointed as the independent hearing officer must be qualified to conduct hearings, have experience or education about BCBSM, insurance rate determination and finance and not be associated financially with BCBSM or a health care provider or be a current or active employee of the state. If a hearing is conducted, the Commissioner ultimately decides the amount of the rate increase that BCBSM will receive, but only after months of hearings and depositions.

This entire process can take nearly two years to complete. The industry standard nationally is some form of file and use rate filing process whereby the company files the proposed rate and the rate goes in to effect while being reviewed by the regulator. Some modification of this more than 30 year old process should be considered.

Proposed Solution: The legislature should examine the BCBSM rate review process in a larger

context in light of the health care changes nationally such as PPACA and HIPAA.

Recommendation #20

Subject: Producer change-of-address fee

OFIR Division: Insurance

Background and Description of Issue: MCL 500.1238 requires a $3 fee to be paid when an agent, solicitor, counselor, or adjuster reports a change of mailing address. Change-of-addresses now accomplished electronically through the NIPR gateway and not directly by OFIR.

Proposed Solution: The statute should be amended to remove the $3 fee charged to an insurance producer each time they report a change of their mailing address.

Recommendation #21

Subject: MCL 500.2110a - Premium discount plan.

If uniformly applied to all its insureds, an insurer may utilize factors in addition to those permitted by section 2111 for insurance if the plan is consistent with the purposes of this act and reflects reasonably anticipated reductions in losses or expenses. This section does not affect benefits or obligations required under chapter 31. Nothing in this section authorizes an insurer to offer or prohibits an insurer from offering premium discount plans concerning any of the following:

(a) Health care services, health care providers, or health care facilities.
(b) Automobile repair providers.
(c) Materials used in the repair of an automobile.

OFIR Division: Insurance

Background and Description of Issue: The Essential Insurance Act allows an insurer to offer additional discounts not specially referenced in the act if they are actuarially justified. No such provision allows for additional surcharges. The result has been that the base rate referenced in the act has steadily increased to allow for discounts authorized under 2110a. Allowing for surcharges would make the resultant rate more transparent for the consumer.

Proposed Solution: Amend the statute to read "If uniformly applied to all its insureds, ~~an insurer may establish and maintain a premium discount plan~~ an insurer may utilize factors in addition to those permitted by section 2111 for insurance if the plan is consistent with the purposes of this act . . . . "

Recommendation #22

Subject: MCL 500.2111 - Permissible rating criteria for development of personal lines home and auto insurance rates.

OFIR Division: Insurance

Background and Description of Issue: Sec. 2111 of the Michigan Insurance Code (MCL 500.2111) establishes the allowable rating criteria for the development of personal lines auto and homeowners insurance rates. The criteria present in Sec. 2111 are significantly more restrictive than allowable criteria in other jurisdictions and hinder the ability of insurers in Michigan to properly rate their products based upon risk. Such limitations also result in further cross subsidization of risk and premium.

Proposed Solution: Amend the statute to add "(10) An insurer may use factors in addition to those permitted by this section for insurance if the plan is consistent with the purposes of this act and reflects reasonably anticipated reductions or increases in an individual insured's losses or expenses."

Recommendation #23

Subject: MCL 500.2112 - Written notice to policyholder; time; contents.

At least annually, in conjunction with a renewal notice, a bill, or other notice of payment due issued to a policyholder in conjunction with automobile and home insurance contracts, an insurer shall send to each policyholder a written notice of all of the following:

> (a) A description of the specific rating classifications by which the rates and premiums for the policy have been determined. The notice shall be of sufficient detail and clarity so that the policyholder can reasonably verify the applicability and accuracy of the rating classifications.
> (b) A general explanation of the extent to which rates or premiums vary among insureds on the basis of the rating classifications used by the insurer.
> (c) Sources and reasonable procedures by which the individual can obtain from the insurer additional information sufficient for the individual to calculate and confirm the accuracy of his or her specific premium.
> (d) Relevant information regarding the rights of an insured, under sections 2113 and 2114, to appeal the application of the insurer's rating plan in determining his or her premium, to obtain documentation from the insurer regarding the determination of the rate, to appeal the application of the insurer's underwriting rules to the person, to request an informal conference with the insurer, and to file with the commissioner a complaint as an aggrieved person.
> (e) A description of all of the insurer's underwriting rules based upon insurance eligibility points and a description of all of the underwriting rules of the insurer's affiliates based upon insurance eligibility points.
> (f) A suggestion that the insured contact his or her agent to determine if he or she is eligible for insurance from an affiliate of the insurer or under a different rating plan of the insurer which would provide to the insured insurance at a more favorable premium.

OFIR Division: Insurance

Background and Description of Issue: Each year an insurer must mail out a small booklet to each of its policyholders explaining how the rate for their auto/home insurance was arrived at. The booklet is very costly to provide and serves very little value to the consumer other then add cost to the system.

Proposed Solution: The detailed information requirement should be revised to require that the insurer (1) provide a one-page (or less) summary of the detailed information they are required by statute to make available to a consumer with each bill and (2) provide that detailed information on request.

OFIR comment: While we agree with the change to require a summary of the information currently being provided, we would prefer the statutory change not prescribe the length of the document.

Recommendation #24

Subject: Requirement to provide the lowest available quote for auto/home insurance

OFIR Division: Insurance

Background and Description of Issue: MCL 500.2116 requires an agent licensed to represent one or more insurers to provide each eligible person seeking an automobile or home insurance quote with the lowest available premium quotation for the coverages of the form or types of insurance sought by the eligible person. Such a requirement discriminates against agents that represent more than one insurer by adding additional business costs, is outdated with the advent the ability for the consumer to electronically obtain insurance quotes without speaking to an agent, and is not reflective today's competitive insurance market.

Proposed Solution: Eliminate the requirement that an agent who represents more than one insurer provide the lowest available quotation for automobile or home insurance by amending MCL 500.2116 (1) (a) to read "Provide each eligible person seeking automobile insurance or home insurance the ~~lowest available~~ **a** premium quotation for the forms . . . " and (b) to read "Inform the eligible person of the number of insurers that he or she represents. If the agent represents additional insurers from which the eligible person may obtain insurance, the agent ~~shall~~ **may** provide . . . "

Recommendation #25

Subject: MCL 500.2117, 2119 and 2120 - Underwriting Rules for Home and Auto

OFIR Division: Insurance

Background and Description of Issue: The Michigan Essential Insurance Act in comparison to other states is restrictive in many ways. One of the particularly troubling restrictions is the "Affiliate Rule".

The rule for home insurance provides that under MCL 500.2117:

> (1) As a condition of maintaining its certificate of authority, an insurer shall not refuse to insure, refuse to continue to insure, or limit the coverage available to an eligible person for home insurance, except in accordance with underwriting rules established pursuant to this section and section 2119. An insurer shall not establish underwriting rules for home insurance for contracts providing identical coverages that differ from those of any affiliate of the insurer.

The rule provides for auto insurance under MCL 500.2119:

> (3) Affiliated insurers shall not adopt underwriting rules for automobile insurance contracts providing identical coverages which would permit a person to be insured, for automobile insurance, with more than 1 of the affiliated insurers, unless the affiliated insurers use identical rates and rating plans and have adopted identical underwriting rules in compliance with this section.

The Rule would cause affiliated companies which offer identical coverages to have identical underwriting rules and rating platforms. With ongoing mergers and consolidation of insurers the Affiliate Rule creates flexibility hurdles. No other state has such a requirement.

Proposed Solution: These statutes require that affiliated insurance companies use the same underwriting rules and rating systems when they offer identical coverage and should be amended to eliminate this requirement.

Recommendation #26

Subject: MCL 500.2121 - Home Inspection Criteria

OFIR Division: Insurance

Background and Description of Issue: Section 2121 of the Michigan Insurance Code establishes restrictions on the criteria that maybe utilized by an insurer, if that insurer uses inspection of a dwelling to determine whether the insured or applicant is an eligible person for home insurance.

Proposed Solution: Repeal this section of the code as outdated and unnecessary in today's market place. As an alternative to full repeal, we recommend changing the text to read:

> (1) If an insurer uses an inspection of a dwelling to determine whether the insured or applicant is an eligible person for home insurance, criteria for selecting dwellings for inspection shall not be based upon ~~any of the following:~~
>
> ~~(a) Location, whether by political subdivision, census tract, zip code, neighborhood, or area which may be described as a block, set of blocks, or by street coordinates.~~
>
> ~~(b) The age of the dwelling or the age of its plumbing, heating, electrical, or structural components, or of any other components which form a part of the dwelling.~~
>
> ~~(c) The market value of a dwelling, unless the value is used as a minimum value above which all dwellings will be inspected.~~
>
> ~~(d) The amount of insurance, unless the amount is used as a minimum above which all dwellings will be inspected.~~
>
> ~~(e)~~ ~~R~~race, color, creed, marital status, sex, national origin, residence, age, disability, or lawful occupation.
>
> ~~(2) If an insurer establishes an inspection program that provides for inspection of a portion of its existing business on a periodic basis, the inspection program shall not be based upon any of the criteria in subsection (1)(a), (c), or (e).~~
>
> ~~(3)~~ **(2)** Criteria for selecting dwellings for inspection shall be filed with the commissioner for informational purposes only. The commissioner, after a hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, shall disapprove the further use of inspection criteria, if the commissioner finds that the criteria are inconsistent with the provisions of this chapter.

Recommendation #27

Subject: MCL 500.3109 - Offer of Deductibles

OFIR Division: Insurance

Background and Description of Issue: Under MCL 500.3109, no-fault auto insurers may offer, at appropriately reduced premium rates, deductibles that must be achieved before benefits are paid. The statute currently allows insurers to offer deductibles up to $300 without prior approval; higher deductibles require OFIR prior approval.

Proposed Solution: Amend MCL 500.3109 to eliminate the arbitrary deductible cap.

Recommendation #27

Subject: MCL 500.3109a - Mandatory offer of no-fault auto "coordinated medical policy" premium discounts.

OFIR Division: Insurance

Background: Under MCL 500.3109a, no-fault auto insurers are required to offer insureds a premium discount if the insured has a coordinating health and accident policy (e.g. employer-provided BCBSM) that would be in a primary position to provide benefits in the event of injury in an auto accident, and the no-fault carrier would be in a secondary position. However, for the most part, private health and accident policies do not cover auto accident-related injuries. So, auto no-fault insurers have been forced to sell the auto insurance policies at a discount, but have not been able to reduce their costs.

Proposed Solution: Amend MCL 500.3109a to make the offering of coordinated medical policy discount permissive.

Recommendation #27

Subject: MCL 500.3113(a) - Clarify prohibition of PIP coverage for those injured in an unlawfully taken vehicle.

OFIR Division: Insurance

Background and Description of Issue: MCL 500.3113(a) prohibits personal injury protection (PIP) benefits to a person injured in an accident involving an "unlawfully taken" motor vehicle where the injured person was the person who took the vehicle. Michigan courts have very narrowly construed this exclusion such that other persons who were injured in the vehicle — with full knowledge that the vehicle was stolen, but who had not participated in the unlawful taking — are still able to recover PIP benefits.

Proposed Solution: Amend MCL 500.3113(a) to clarify the language prohibiting PIP coverage for passengers in a car that was taken illegally if that person had reason to believe that the vehicle was illegally taken.

Recommendation #28

Subject: MCL 2236(1) - Prior Approval of Policy Forms

OFIR Division: Insurance

Background and Description of Issue: MCL 500.2236(1) provides that insurance policy forms (contracts, riders, certificates, etc), with the exception of certain commercial lines, have to be submitted to OFIR for prior approval. Failure of the Commissioner to act within 30 days shall constitute approval.

In 1997, then Commissioner Joe Olson issued Exemption Order 97-010-M exempting most policy forms from this filing/prior approval requirement per Sec. 2236(8)(d). Insurers instead had to keep all policy forms on hand and available for OFIR inspection upon request.

In 2009, then OFIR Commissioner Ken Ross issued Order 09-023-M, which rescinded the previous Order 97-010-M to the extent it pertained to personal lines insurance. In 2010, Commissioner Ross issued Order 10-005-M rescinding Order 97-010-M in its entirety. Both Orders were issued over the objection of insurance carriers which argued that filing and prior approval would increase costs and interfere with speed to market for new products, both to the detriment of consumers.

The issue of file, approval, and use of policy forms is further complicated by ongoing litigation (see *Darmer v Citizens*, COA file no. 290805) involving, in part, the question of what constitutes proper approval by OFIR.

Proposed Solution: The statute should be amended to establish a *file and use* system for all future insurance forms with a provision deeming forms approved 30 days after filing. Currently, the majority of forms require prior approval with a 30 day deemer.

Recommendation #29

Subject: MCL 500.2213 requires that an insured be given the opportunity to present their grievance to the board of directors or other managerial body of an insurance company.

Background and Description of Issue: The language is unworkable in that it does not equate to an insurance company's normal process for an appeal or even a panel hearing.

Proposed solution: This statute requires that an insured be given the opportunity to present their grievance to the board of directors or other managerial body of an insurance company. The statute should be amended by striking the current language in (e) and replacing it with "Provides an insured or enrollee the right to present a grievance orally or in writing before a designated impartial internal decision maker."

OFIR comment: This section requires the establishment of an internal formal grievance procedure for health insurers that includes providing an insured or enrollee "the right to appear before the board of directors or designated committee or the right to a managerial-level conference to present a grievance." (MCL 500.2213 (1)(e)) It is our interpretation that the appeal to the board of directions is one of two options provided by this statute, with the other being the right to a managerial-level conference. This change does not appear to be needed.

Recommendation #30

Subject: P & C Agent Licensing Curriculum

OFIR Division: Insurance

Background and Description of Issue: Rule 500.3(a)(i) sets forth areas of the curriculum that P & C agents are responsible to know and includes the requirement that the curriculum include the Michigan Standard Fire Policy. This is a remnant of the old "165 lines" previously contained in MCL 500.2832 which repealed effective 1/1/92.

Proposed Solution: This rule specifies the curriculum that P & C agents are required to master for licensure. The specific provision identified requires knowledge of the obsolete *Michigan standard fire policy*. The rule should be revised to include a general reference to *fire insurance*.

Recommendation #31

Subject: Replacement of Life Insurance Policies.

OFIR Division: Insurance

Background and Description of Issues: These rules provide for the duties of the agent (R500.602) and the duties of the insurer (R500.603 and 604), but the only penalties for violations are for agents (R500.606). R500.606 is also objectionable because it states that an agent that fails to comply is rebuttably presumed to have given cause for the revocation or suspension of their license or for the imposition of a civil penalty. Burden shifting where you have to prove yourself innocent is very objectionable.

Proposed Solution: These rules should be replaced by adoption of the NAIC 2007 "Life Insurance and Annuities Replacement Model Legislation" in statutory form.

OFIR comment: We agree with the elimination of R 500.606, which creates the objectionable rebuttable presumption. We will be reviewing the 2007 NAIC Model for possible adoption.

Recommendation #32

Subject: R500.2151-2155 (2005) - Clarification of Reasonable Classification System under the Insurance Code.

OFIR Division: Insurance

Background and Description of Issue: This rule banned the use of insurance credit scoring discounts and mandated recalculation of base rates. On July 8, 2010 the Michigan Supreme Court ruled on the validity of the use of credit-based insurance scores under Michigan law. The Supreme Court found the use of credit was legal and the rule to be "illegal, invalid, and unenforceable."

Proposed Solution: These rules prohibiting the use of credit scores to determine insurance discounts should be rescinded in light of the Michigan Supreme Court's ruling that the practice was permissible under the Insurance Code.

Recommendation #33

Subject: R 500.2201 – 500.2202 - Administrative Rules: Insurance Policy Forms – Discretionary Clauses

Defines "discretionary clause" as a form provision that purports to bind a claimant to, or grant deference in subsequent proceedings to, the insurer's decision, denial, or interpretation on terms, coverage, or eligibility for benefits.

The rule is a blanket declaration that such provisions violate Section 2236(5) of the Insurance Code and bans issuance of contracts that contain them and declares any that do to be void and of no effect.

OFIR Division: Insurance

Background and Description of Issue: The Commissioner incorrectly relied on Section 2236(5) as authority to promulgate these rules. This reliance is based on an incorrect interpretation of that section.

Section 2236(5) is limited to addressing specific instances of the use of misleading or ambiguous language that is actually found in an insurance form.

The only authority granted to the Commissioner by Section 2236(5) is the authority to disapprove a specific form for specific reasons.

Section 2236(5) does not give the Commissioner authority to make blanket determinations regarding generally-described policy provisions.

Proposed Solution: These rules prohibiting the use of discretionary clauses in forms should be rescinded and the Commissioner is encouraged to issue a bulletin on the subject if one is needed.

Recommendation #34

Subject: R 2211-2212 (2007) - Insurance Policy Forms, Shortened Limitation of Action Clauses

OFIR Division: Insurance

Background and Description of Issue: This rule prohibits a shorter limitation of action clause less than any otherwise provided in statute. The former Commissioner found that a three year limitation clause unreasonably reduced the risk purported to be assumed in the general coverage and prohibited the shortening of a policy clause for uninsured motorist coverage to less than six years.

Proposed Solution: These rules prohibiting the use of shortened limitation of action clauses in forms should be rescinded and the Commissioner is encouraged to issue a bulletin on the subject if one is needed.

Recommendation #35

Subject: R 500.2231 – 500.2232 - Administrative Rules: Insurance Policy Forms – Nonconforming Clauses

Describes three form provisions as "nonconforming clauses": (1) a definition of disability in a disability income policy that is more inclusive than that used in the social security act disability proceedings if the definition ceases to apply when the policyholder is denied SSI benefits; (2) a blank endorsement in a personal insurance policy; and, (3) an arbitration provision that requires the insured to travel outside the county of residence, unless insured consents.

The rule is a blanket declaration that such provisions violate Sections 3525 and 2236(5) of the Insurance Code and bans issuance of contracts that contain them and declares any that do to be void and of no effect.

OFIR Division: Insurance

Background and Description of Issue: The Commissioner relied on Section 2236(5) as her authority to promulgate these rules. This reliance is based on an incorrect interpretation of that section.

Section 2236(5) is limited to addressing specific instances of the use of misleading or ambiguous language that is actually found in an insurance form.

The only authority granted to the Commissioner by Section 2236(5) is the authority to disapprove a specific form for specific reasons.

Section 2236(5) does not give the Commissioner authority to make blanket determinations regarding generally-described policy provisions.

Proposed Solution: These rules prohibiting the use of certain nonconforming clauses in forms should be rescinded and the Commissioner is encouraged to issue a bulletin on the subject if one is needed.

Recommendation #36

Subject: Bulletin 2003-01-INS

OFIR Division: Insurance

Background and Description of Issue: Requirements for insurers employing insurance credit scoring discounts (Fitzgerald). This Bulletin provided for guidelines for the use of credit-based insurance discounts. Both Bulletin 2003-01 and 2003-02 were later overridden by Bulletin 2004-06 which banned the use of credit-based insurance score discounts.

Proposed Solution: This bulletin providing guidelines for the use of credit scores to determine insurance discounts should be revised or withdrawn in concert with the passage of legislation based on the NCOIL model regulating the practice.

Recommendation #37

Subject: Bulletin 2003-02-INS

OFIR Division: Insurance

Background and Description of Issue: Update to Bulletin 2003-02-INS: Requirements for insurers employing credit-based insurance scoring discounts. Provided additional guidelines for the use of credit-based insurance score discounts.

Proposed Solution: This bulletin providing guidelines for the use of credit scores to determine insurance discounts should be revised or withdrawn in concert with the passage of legislation based on the NCOIL model regulating the practice.

Recommendation #38

Subject: Bulletin 2004-06-INS

OFIR Division: Insurance

Background and Description of Issue: Informs insurers of change of date in proposed Rule Set 2004-22-LG, imposing ban on use of credit based insurance score discounts. Rule 2004-22-LG never went into effect in that the Michigan courts held it in abeyance pending the resolution of the credit-based insurance score discount litigation. Therefore, Bulletin 2004-06-INS is no longer relevant.

Proposed Solution: This bulletin informing insurers of the effective date of the rules prohibiting the use of credit scores to determine insurance discounts should be withdrawn in light of the Michigan Supreme Court's ruling that the rules in question were illegal and that the practice is permissible under the Insurance Code.

Recommendation #39

Subject: Bulletin 2009-01-INS

OFIR Division: Insurance

Background and Description of Issue: Automobile Insurance Rate Freeze Notification System. This Bulletin implemented a voluntary rate freeze called for by former Governor Granholm and the relevant application period has long since expired.

Proposed Solution: This bulletin implementing a voluntary automobile insurance rate freeze program effective from February 3, 2009 to February 3, 2010 has expired and should be withdrawn.

Recommendation #40

Subject: Prohibition Order No. 05-060-M — December 16, 2005
OFIR Division: Insurance

Background and Description of Issue: Prohibits Uninsured Motorist policy limitation of less than 3 years.

Proposed Solution: Rescind this order and request that OFIR provide guidance on Uninsured/Underinsured Motorist Clauses.

OFIR comment: OFIR is currently researching this issue to determine what, if any, guidance would be appropriate. We agree that action is necessary due to conflicts between rules, orders, and case law.

Recommendation #40

Subject: Order No. 06-008-M — April 4, 2006

OFIR Division: Insurance

Background and Description of Issue: Applies December 05 Prohibition Order (05-060-M) on Uninsured Motorist policy limitations of less than 3 years to Underinsured Motorists coverage.

Proposed Solution: Rescind this order and request that OFIR provide guidance on Uninsured/Underinsured Motorist Clauses.

OFIR comment: OFIR is currently researching this issue to determine what, if any, guidance would be appropriate. We agree that action is necessary due to conflicts between rules, orders, and case law.

Recommendation #41

Subject: Bulletin 2009-11-INS

OFIR Division: Insurance

Background and Description of Issue: Rescinds the 1997 Exemption Order which exempted property and casualty automobile and home insurance forms from filing and prior approval requirements. In 1997, Commissioner Olson exempted property and casualty companies from form filing requirements. The instant Bulletin 2009-11 rescinded Commissioner Olson's 1997 order as to the 1997 exemption for auto and home filings.

Proposed Solution: The bulletin and Order No. 09-023-M rescinded the 1997 Exemption Order as it pertained to property and casualty (automobile and home) forms. Rescind both and encourage OFIR towards the approach embodied in the 1997 Exemption Order which exempted forms from filing and prior approval.

Recommendation #41

Subject: Order No. 09-023-M — May 22, 2009

OFIR Division: Insurance

Background and Description of Issue: Rescinds the 1997 Exemption Order as it pertains to filing and prior approval requirements of forms for home and auto insurance. Called for all automobile and home owner policy forms in use since 1977 to be filed and approved.

Proposed Solution: The order and Bulletin 2009-11-INS rescinded the 1997 Exemption Order as it pertained to property and casualty (automobile and home) forms. Rescind both and encourage OFIR towards the approach embodied in the 1997 Exemption Order which exempted forms from filing and prior approval.

Recommendation #42

Subject: Bulletin 2010-02-INS

OFIR Division: Insurance

Background and Description of Issue: Informational Statement Regarding Rescission of 1997 Exemption Order — Wherein a prior Bulletin, 2009-II, eliminated the exemption for automobile and home forms, the instant Bulletin eliminated the exemptions for all other forms (life insurance, primarily). The result was a complete nullification of Commissioner Olsen's 1997 Exemption Order.

Proposed Solution: The bulletin and Order No. 10-005-M rescinded the remainder of the 1997 Exemption Order making all forms subject to filing and prior approval. Rescind both and encourage OFIR towards the approach embodied in the 1997 Exemption Order which exempted forms from filing and prior approval.

Recommendation #42

Subject: Order No. 10-005-M—January26, 2010

OFIR Division: Insurance

Background and Description of Issue: This order rescinded the 1997 Exemption Order 97-0l0-M in its entirety. Mainly impacts life insurers. The prior Order 09-023-M called for all automobile and home owner policy forms to be filed and approved.

Subject: Insurance Department forms requirements should be re-reviewed. Specifically, most forms have been exempt from filing prior to the July 2010 rescission, and as such insurance companies have been filing all forms for about a year now. On a general basis, the State should re-review the bulletin for products that should be exempted from the form filing requirement that are not reviewed or where the forms are simply unneeded - for example, under the group accident and health umbrella, it is suggested to exempt from filing any vision, hearing product offerings, in addition to forms that are either: 1) no longer being issued due to replacement of the forms by a more current version or 2) no longer being issued as the products have been discontinued.

Proposed Solution: The order and Bulletin 2010-02-INS rescinded the remainder of the 1997 Exemption Order making all forms subject to filing and prior approval. Rescind both and encourage OFIR towards the approach embodied in the 1997 Exemption Order which exempted forms from filing and prior approval.

Recommendation #43

Subject: Regulator / Industry Roundtable Environment – Recognition that the health of the industry and its ability to serve its Michigan customers is significantly improved by an environment of respect and collaboration.

OFIR Division: Insurance

Background and Description of Issue: Administering the laws and regulations affecting the insurance marketplace in Michigan is a large, complex and difficult undertaking. In a respectful and collaborative environment, regulators, regulated entities, and consumers benefit significantly. Creating that environment requires frequent and open dialogue and the investment of the time necessary to build working relationships based on trust and respect. The relationship between OFIR and the insurance industry has been particularly strained in recent years.

Examples of issues that resulted in strained relationships include the commissioner issuing several data calls of questionable utility without first consulting industry representatives to help identify the need and value of data requested and/or the most economical means of collecting information considered necessary.

Proposed Solution: Encourage OFIR to participate in industry roundtables to discuss regulatory issues.

Recommendation #44

Subject: Requirement that insurance agency branch locations must be separately licensed with different name and FEIN number

OFIR Division: Insurance

Background and Description of Issue: If an insurance agency opens a second location (common ownership), that branch location has to be licensed. Since OFIR's database cannot have multiple locations (agencies) under the same FEIN number, each location is required to have a different name and FEIN number. OFIR agrees that it does not make sense to require a business to have multiple FEIN numbers, and will be fixed with the implementation of its new automation system.

Proposed Solution: Encourage OFIR to continue to work towards resolution of this issue.

OFIR comment: OFIR is continuing to work toward resolution of this issue. System limitations prevent us from correcting the situation immediately; however we are looking at alternatives including the possibility of no longer licensing branch locations separately.

Recommendation #45

Subject: Insurance Bureau Fund – Good Fiscal Management, Transparency, and strengthening Michigan's role in national policy forums.

OFIR Division: Insurance

Background and Description of Issue: The Legislature created the Insurance Bureau Fund to provide funding for regulatory expenses borne by the state in connection with the Commissioner's administration of the Insurance Code. (MCL 500.225) The IBF was also designated as a funding source for expenses borne by Michigan legislators in connection with participation in national policy groups such as the National Conference of Insurance Legislators and National Association of Insurance Commissioners. It is not clear that the IBF has been administered consistent with the clear legislative intent.

It is difficult, if not impossible, for the public (including the insurance industry) to monitor the administration of the Insurance Bureau Fund to ensure the relevant statutory provisions are being carried out. Because the industry is taxed to fund the IBF, and because the funds are to be used only for regulatory purposes under the commissioner's authority and not to revert to the general fund, this is a serious matter affecting Michigan's regulatory and tax environment for insurance companies.

In recent years, the Commissioner has refused to "approve" reimbursement of expenses incurred by legislators attending NCOIL and/or NAIC meetings. This is inconsistent with the plain language of the statute and the result has been a considerably diminished role for Michigan in national policy making activities directly affecting Michigan. (The clear trend in insurance regulatory policy making is for NAIC and NCOIL to develop model laws that become the basis for individual state laws. Uniformity across the states is fostered through this approach, as is the effort to lose state regulatory authority to federal encroachments.)

Proposed Solution: Encourage OFIR to administer MCL 500.225 in an open and transparent manner to encourage legislators to participate in insurance activities coordinated by insurance and legislative associations including the NAIC and NCOIL.

Recommendation #46

Subject: MEDC Activities – Occupying Market Space
The MEDC maintains staff dedicated to providing advice, counsel and services to employers who are required by law to purchase workers compensation insurance. Details about the programs and related services can be found on the MEDC website at the following address: http://www.michiganadvantage.org/Workers-Compensation/

OFIR Division: Insurance

Background and Description of Issue: The MEDC website contains the following offer to Michigan employers:

> The Michigan Economic Development Corporation℠ (MEDC) offers a free Workers' Comp Cost Control Service with specially trained staff available to help answer specific questions. This service can also provide customized workers' comp analysis for companies with existing guaranteed cost policies.

The MEDC also offers a number of services that duplicate private sector services provided by licensed producers, counselors, and insurance companies. The MEDC even goes so far as to "identify appropriate private sector services" and to provide on-site loss control services.

Proposed Solution: Encourage the MEDC to cease providing services in the workers compensation insurance marketplace.